

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RICHARD HARSHBARGER,

Plaintiff,

vs.

NEON GARDEN VALLEY MHP LLC.,

Defendant.

**8:18CV425**

**MEMORANDUM AND ORDER**

This matter is before the court on what has been docketed and the court construes as Plaintiff's Notice of Appeal (filing 23) and Motion for Leave to Proceed in Forma Pauperis on Appeal (filing 24). The Notice of Appeal was filed approximately one year and nine months after the court entered its judgment in this case.

Federal Rule of Appellate Procedure 4(a)(1)(A) sets forth that a notice of appeal in a civil case must be filed within 30 days of the entry of judgment. This requirement is both "mandatory and jurisdictional." *Burgs v. Johnson Cnty., Iowa*, 79 F.3d 701, 702 (8th Cir. 1996). A district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause, provided that the party moves for the extension of time within 30 days of the expiration of the 30-day period set out in Rule 4(a)(1)(A). Fed. R. App. P. 4(a)(5)(A)(ii). In addition, if a party files one of the post-judgment motions listed in Rule (a)(4)(A), the time to file the appeal runs from the entry of the order disposing of the motion. Fed. R. App. P. 4(a)(4)(A). An untimely notice of appeal cannot serve as a motion for extension of time to file an appeal. *Burgs*, 79 F.3d at 702.

Here, the court entered a final judgment dismissing this case on May 6, 2019. Plaintiff filed his Notice of Appeal 638 days later. He did not file any post-

judgment motions that would extend the time to file a notice of appeal. In addition, he did not move to extend the time to file a notice of appeal. Because Plaintiff's appeal is grossly untimely, the court certifies Plaintiff's appeal is not taken in good faith and he is not entitled to proceed in forma pauperis on appeal. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").

IT IS ORDERED that: Plaintiff's Motion for Leave to Appeal in Forma Pauperis (filing 24) is denied.

Dated this 3rd day of February, 2021.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge